

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL M. BRADLEY,

Petitioner,

DECISION AND ORDER

07-CV-6445L

v.

DARWIN LaCLAIR,

Respondent.

Michael M. Bradley (“Bradley”), who was convicted of the murder of James Domm in Monroe County Court in January 2000 has filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254 challenging that conviction. I referred the petition to United States Magistrate Judge Victor E. Bianchini pursuant to 28 U.S.C. § 636(b)(1). In addition to the original petition, Bradley has filed a motion to stay proceedings on the petition and has moved to amend the petition.

Magistrate Judge Bianchini issued a thorough, thirty-one page Report and Recommendation. He recommended denying the motion to stay, denying the motion to amend and dismissing the petition for habeas corpus relief.¹ Bradley duly filed objections to Magistrate Judge Bianchini’s Report and Recommendation (Dkt. #23).

¹ Subsequent to Magistrate Judge Bianchini’s Report and Recommendation, Bradley filed a motion (Dkt. #24) directed to this Court seeking discovery of certain documents and a transcript in connection with proceedings in Las Vegas, Nevada.

I have carefully considered the Magistrate Judge's Report and Recommendation as well as Bradley's objections. I accept and adopt the Report and Recommendation of Magistrate Judge Bianchini and see no reason to modify, amend or reject the Report and Recommendation. I, therefore, accept the Report and Recommendation.

I concur with all of the findings made by Magistrate Judge Bianchini. I concur with him that Bradley's original petition was filed timely. I also agree with his assessment that Bradley's request to amend the petition should be denied for the reasons set forth in the Magistrate Judge's Report and Recommendation. The requested amendment essentially seeks to raise Fourth Amendment claims and as the Magistrate Judge discussed, leave to amend for such claims would be futile.

I also agree with Magistrate Judge Bianchini's assessment that Bradley has failed to meet the requirements for granting a stay and abeyance as set forth in the United States Supreme Court case of *Rhines v. Webber*, 544 U.S. 266 (2005). As discussed by the Magistrate Judge, Bradley has failed to demonstrate either good cause or that his claims are potentially meritorious and, therefore, it would be an abuse of discretion to order the stay-and-abeyance procedure in this case.

In addition to the procedural motions, Magistrate Judge Bianchini carefully considered the substantive claims advanced by Bradley in the original petition, and in the interest of judicial economy, the claims sought to be raised by the proposed amendment. Magistrate Judge Bianchini discusses all of the contentions, including the Fourth Amendment claims which were discussed in depth before the New York State appellate courts.

It is clear that the State did provide a full and fair opportunity to litigate the Fourth Amendment claims, and there is no basis for habeas corpus relief relative to such Fourth Amendment

claims. The State procedure was certainly adequate and fair, and there is absolutely no basis for litigating those claims in Federal Court. As the Magistrate Judge noted, just because Bradley disagrees with the determinations of the State Court does not justify relitigating the matters here in Federal Court.

I have considered the other claims raised by Bradley and discussed by Magistrate Judge Bianchini, and I accept and adopt the Magistrate Judge's reasoning, analysis and conclusion that habeas corpus relief is not warranted.

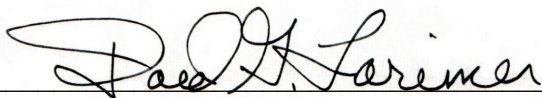
CONCLUSION

I accept and adopt the Report and Recommendation of United States Magistrate Judge Victor E. Bianchini (Dkt. #22). Petitioner's motion to stay (Dkt. #14) is denied. Petitioner's motion to amend the petition (Dkt. #11) is denied.

Petitioner's petition for a writ of habeas corpus is in all respects dismissed. Petitioner's motion for discovery (Dkt. #24) is denied as moot.

Petitioner has failed to make a substantial showing of a denial of a federal constitutional right and, therefore, I deny a certificate of appealability with respect to any of petitioner's claims.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
February 24, 2009.